

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE B. CHURCH, III and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 00-1449; Submitted on the Record;
Issued April 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On February 2, 1994 appellant, then a 46-year-old mailhandler, filed an occupational disease claim alleging that he sustained right sciatic radiculopathy causally related to factors of his federal employment. The Office accepted the claim for sciatic radiculopathy and aggravation of lumbar disc disease.

Appellant returned to full-time limited-duty employment on October 1, 1994. By decision dated May 3, 1995, the Office determined that appellant had no loss of wage-earning capacity, finding that his actual earnings as a modified mailhandler effective October 1, 1994 fairly and reasonably represented his wage-earning capacity.

By decision dated April 18, 1997, the Office terminated appellant's compensation and medical benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Edward Spindell, a Board-certified orthopedic surgeon selected to resolve a conflict in medical opinion, established that he had no further condition or disability causally related to his accepted employment injury. In a decision dated December 18, 1998 and finalized December 21, 1998, a hearing representative affirmed the Office's April 18, 1997 termination of appellant's compensation.

In a letter received by the Office on October 7, 1999, appellant requested reconsideration of his claim. By decision dated December 13, 1999, the Office denied merit review of its prior decision.

The Board finds that the Office acted within its discretion in denying review of the merits of appellant's claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's December 13, 1999 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision finalized December 21, 1998 and March 14, 2000, the date appellant filed his appeal before the Board, the Board lacks jurisdiction to review the decision finalized December 21, 1998.¹

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In support of his request for reconsideration, appellant reviewed the medical evidence of record and noted that his most recent magnetic resonance imaging study showed that he had a herniated disc. Appellant contended that he was disabled from his usual work due to his employment injury. However, the Office previously considered and rejected appellant's contention. Thus it does not constitute a relevant legal argument sufficient to require a review of the case on the merits. Additionally, lay persons are not competent to render a medical opinion; therefore, appellant's statement does not constitute relevant evidence not previously considered by the Office.⁴

¹ See 20 C.F.R. §§ 501.2(c); 501.3(d).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ See *James A. Long*, 40 ECAB 538 (1989).

The December 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member